

THE OFFICE OF REGULATORY STAFF
SURREBUTTAL REHEARING TESTIMONY
OF

STEVEN W. HAMM

AUGUST 29, 2018



DOCKET NO. 2017-292-WS

**Application of Carolina Water Service, Incorporated for
Approval of an Increase in Its Rates for Water and Sewer
Services**

SURREBUTTAL REHEARING TESTIMONY OF
STEVEN W. HAMM
ON BEHALF OF
THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF
DOCKET NO. 2017-292-WS
IN RE: APPLICATION OF CAROLINA WATER SERVICE,
INCORPORATED FOR APPROVAL OF AN INCREASE IN ITS RATES FOR
WATER AND SEWER SERVICES

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the rebuttal testimony of Keith M. Babcock, Esquire filed on behalf of Carolina Water Services (“CWS”) addressing certain CWS litigation expenses that I do not believe should be approved by the Commission in this case.

Q. DID MR. BABCOCK CORRECTLY CHARACTERIZE YOUR TESTIMONY AND POSITIONS?

A. No.

Q. PLEASE EXPLAIN.

A. For example, my prefiled testimony addressed the fact that the Congaree River Keeper (“River Keeper”) Litigation¹ filed in federal court alleged repeated CWS violations of the federal Clean Water Act when CWS engaged in ongoing wastewater discharges that

¹Congaree River Keeper, Inc. v. Carolina Water Service, Inc., C/A 3:15-194-MBS (Dist. SC. March 20, 2017)

were in violation of its National Pollution Discharge Elimination System (“NPDES”) permit and applicable 208 Water Quality Management Plan.

Q. DID THE ORDER ISSUED BY FEDERAL JUDGE SEYMOUR CONSIDER THE ALLEGATIONS RAISED BY THE RIVER KEEPER REGARDING IT’S CLAIMS OF REPEATED VIOLATIONS BY CWS IN ITS EFFLUENT DISCHARGES AND ONGOING VIOLATIONS BY CWS OF ITS NPDES PERMIT?

A. Yes. The federal court Order directly noted that DHEC found CWS in violation of its Permit in February 2000 for exceeding permitted discharge levels. The Court noted later in its Order that CWS exceed discharge limits twenty-three (23) times between 2009 and 2013.

Q. WHAT DID THE FEDERAL COURT ORDER FIND WITH REGARD TO THE CWS DISCHARGE VIOLATIONS?

A. The federal court Order found that the CWS discharge violations represented a “continuing violation” by CWS when it denied a CWS claim that the River Keeper lawsuit was barred by an applicable statute of limitations. The federal court Order rejected the CWS defense that the River Keeper could not proceed due to the Statute of Limitations.

Q. WHAT DID THE FEDERAL COURT ORDER FIND REGARDING THE CITIZENS REPRESENTED BY RIVER KEEPER?

A. The Court noted that affected citizens filed sworn Affidavits that the water’s appearance and smell were sufficient to sustain a finding of an injury directly related to the discharges from the CWS facility. As of March 30, 2017, the federal court Order found continuing injury to River Keeper clients sufficient to justify the imposition of penalties against CWS for its ongoing operating violations.

Q. DID THE FEDERAL COURT ORDER ADDRESS CWS CLAIMS THAT OTHER INDEPENDENT PARTIES' ACTIONS CONSTITUTED AN ACCEPTABLE REASON AND BASIS FOR ITS ONGOING VIOLATIONS OVER A SEVENTEEN YEAR TIME FRAME?

A. Yes. The federal court Order rejected those CWS excuses. In part, the Court stated the following:

“Further, Defendant has the obligation to contract with Town or take other measures to fulfill the permit requirements. Defendant has kept its plant open for seventeen years after it was required to connect. While regional connection does require other actors' assistance and approval, Defendant cannot be rewarded for its lack of a good faith to engage in negotiations and receive the required approvals. The court finds that the independent actors' behavior is sufficiently predictable. The court finds that Plaintiff's injury is traceable to Defendant's actions.

(Emphasis added). Fed. Ct. Order at p. 14.

Q. DID MR. BABCOCK ADDRESS YOUR POLICY CONCERNS?

A. No. Mr. Babcock simply repeats the ongoing position of CWS. I have concluded that his position can be summarized as CWS spent money for certain legal expenses and even where CWS fails to vindicate its legal claims before state agencies or before the courts, ratepayers should still pay for legal expenses even where the main beneficiary is CWS stock holders and not ratepayers.

Q. DO YOU RECOMMEND THAT THE COMMISSION APPROVE CWS EFFORTS TO FORCE RATEPAYERS TO PAY FOR THE LEGAL EXPENSES AT ISSUE IN THIS HEARING?

A. No. The Commission approves and sets rates that it believes will support ongoing operations in accordance with applicable operating requirements and state and federal water and health requirements. In this case, CWS seeks to recover from ratepayers

1 litigation costs stemming directly from its failure to comply with a permit requirement and
2 obligation dating back seventeen years. Ratepayers are not responsible for twenty-three
3 waste water discharge events spanning from 2009 to 2013. In addition, CWS was not
4 successful in defending its action in federal court related to its 23 discharge violations or
5 its failure to comply with its DHEC permit. How CWS handled this matter is a
6 management decision that did not work out for CWS. Ratepayers are not responsible for
7 poor management decisions that solely serve to benefit stockholders and fail to survive
8 federal court judicial scrutiny.

9 **Q. BASED ON YOUR FORTY PLUS YEARS OF REGULATORY EXPERIENCE,**
10 **WHAT IS THE REGULATORY POLICY YOU RECOMMEND THAT THE**
11 **COMMISSION ADOPT AND APPLY IN THIS PROCEEDING?**

12 **A.** I recommend that the Commission should clearly announce and apply a regulatory
13 policy to require all regulated entities to provide a fact-based explanation and regulatory
14 policy justification to address any challenged legal expenses. The explanation and
15 justifications should clearly demonstrate to the Commission that any contested legal
16 expenses were made in order to advance the primary interests of ratepayers and were not
17 made to protect stockholders or owners of the utility in question.

18 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL REHEARING TESTIMONY?**

19 **A.** Yes.
